

SENATE BILL 1328

By Henry

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 31; Title 7, Chapter 34; Title 7, Chapter 82; Title 9, Chapter 21; Title 12, Chapter 10; Title 13, Chapter 23; and Title 49, Chapter 3, relative to the issuance, sale and terms of bonds, refunding bonds, notes, other obligations and related contracts.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 4-31-104, is amended by adding the following subsection:

(__) When entering into any contracts or agreements authorized under this chapter, including contracts or agreements providing for liquidity and credit enhancement and reimbursement agreements relating thereto, interest rate swap or exchange agreements, agreements establishing interest rate floors or ceilings or both, other interest rate hedging agreements, evidencing a transaction bearing a reasonable relationship to this state and also to another state or nation, agree in the written contract or agreement that the rights and remedies of the parties thereto shall be governed by the laws of this state or the laws of such other state or nation; provided, however, jurisdiction over the authority against which an action on such a contract or agreement is brought shall lie solely in a court located in Tennessee which would otherwise have jurisdiction of

actions brought in contract against the authority.

SECTION 2. Tennessee Code Annotated, Section 4-31-105(a), is amended by adding the following new items:

(___) With respect to all or any portion of any issue of bonds or notes issued or anticipated to be issued hereunder, the authority may authorize and enter into interest rate swap or exchange agreements, agreements establishing interest rate floors or ceilings or both, and other interest rate hedging agreements and options in respect thereto, from time to time and under such terms and conditions as the authority may determine, including, without limitation, provisions permitting the authority to pay to or receive from any person or entity for any loss of benefits under such agreement upon early termination thereof or default under such agreement.

(___) The authority may enter into an agreement to sell its bonds or notes under this chapter providing for delivery of such debt not more than five (5) years (or such greater period of time if approved by the comptroller of the treasury) from the date of execution of such agreement or in the case of refunding bonds the earlier of the first date on which the bonds being refunded can be optionally redeemed resulting in cost savings or be optionally redeemed at par.

SECTION 3. Tennessee Code Annotated, Section 7-34-109(f), is amended by deleting "With respect to all or any portion of any issue of bonds issued hereunder, at any time during the term of the bonds" and by substituting instead the following: "With respect to all or any portion of any issue of bonds or notes issued or anticipated to be issued hereunder, at any time during the term of the bonds or notes".

SECTION 4. Tennessee Code Annotated, Section 7-34-109(g), is amended by adding the phrase "and notes" following the phrase "its bonds" each time it appears in subsection (g).

SECTION 5. Tennessee Code Annotated, Section 7-34-109(h), is hereby amended by deleting the reference to subsections (c) and (d) in the introductory clause and by substituting

instead the following: "subsections (f) and (g)."

SECTION 6. Tennessee Code Annotated, Section 7-34-109(i), is amended by adding the phrase "and notes" after the word "bonds" in the introductory phrase of subsection (i).

SECTION 7. Tennessee Code Annotated, Section 7-34-109(i), is hereby amended by adding the phrase "or with the purchaser of the notes authorized under Section 7-34-111" following the phrase "with the purchaser of the bonds authorized under this section."

SECTION 8. Tennessee Code Annotated, Section 7-82-502(c), is amended by deleting the first clause thereof and by substituting instead the following: "With respect to all or any portion of any issue of bonds issued or anticipated to be issued hereunder,".

SECTION 9. Tennessee Code Annotated, Section 9-21-602(c), is amended by deleting the first clause thereof and by substituting instead the following: "With respect to all or any portion of any issue of capital outlay notes issued or anticipated to be issued hereunder,".

SECTION 10. Tennessee Code Annotated, Section 9-21-907(c), is amended by deleting the first clause thereof and by substituting instead the following: "With respect to all or any portion of any issue of general obligation refunding bonds issued or anticipated to be issued hereunder,".

SECTION 11. Tennessee Code Annotated, Section 9-21-914(a)(2), is amended by deleting the phrase "located in the state of Tennessee" and inserting instead the phrase "either located in the state of Tennessee or regulated by a federal entity".

SECTION 12. Tennessee Code Annotated, Section 9-21-1006(c), is amended by deleting the first clause thereof and by substituting instead the following: "With respect to all or any portion of any issue of revenue refunding bonds issued or anticipated to be issued hereunder,".

SECTION 13. Tennessee Code Annotated, Section 9-21-1012(a)(2), is amended by deleting the phrase "located in the state of Tennessee" and inserting instead the phrase "either located in the state of Tennessee or regulated by a federal entity".

SECTION 14. Tennessee Code Annotated, Section 12-10-111(k), is amended by deleting the first clause thereof and by substituting instead the following: "With respect to all or any portion of any issue of bonds and refunding bonds issued or anticipated to be issued hereunder,".

SECTION 15. Tennessee Code Annotated, Section 12-10-116(c), is amended by deleting the first clause thereof and by substituting instead the following: "With respect to all or any portion of any lease, loan agreement, sales contract and operating contract described in this chapter, entered into or anticipated to be entered into,".

SECTION 16. Tennessee Code Annotated, Section 13-23-115, is amended by adding the following subsection:

(__) When entering into any contracts or agreements authorized under this Chapter, including contracts or agreements providing for liquidity and credit enhancement and reimbursement agreements relating thereto, interest rate swap or exchange agreements, agreements establishing interest rate floors or ceilings or both, other interest rate hedging agreements, evidencing a transaction bearing a reasonable relationship to this state and also to another state or nation, agree in the written contract or agreement that the rights and remedies of the parties thereto shall be governed by the laws of this state or the laws of such other state or nation; provided, however, jurisdiction over the agency against which an action on such a contract or agreement is brought shall lie solely in a court located in Tennessee which would otherwise have jurisdiction of actions brought in contract against the agency.

SECTION 17. Tennessee Code Annotated, Section 13-23-120(a), is amended by designating the existing subsection as subdivision (1) and by adding the following as subdivisions (2) and (3):

(2) With respect to all or any portion of any issue of bonds or notes issued or anticipated to be issued hereunder, the agency may authorize and enter into interest

rate swap or exchange agreements, agreements establishing interest rate floors or ceilings or both, and other interest rate hedging agreements and options in respect thereto, from time to time, and under such terms and conditions as the agency may determine, including, without limitation, provisions permitting the agency to pay to or receive from any person or entity for any loss of benefits under such agreement upon early termination thereof or default under such agreement.

(3) The agency may enter into an agreement to sell its bonds or notes under this chapter providing for delivery of such debt not more than five (5) years (or such greater period of time if approved by the comptroller of the treasury) from the date of execution of such agreement or in the case of refunding bonds the earlier of the first date on which the bonds being refunded can be optionally redeemed resulting in cost savings or be optionally redeemed at par.

SECTION 18. Tennessee Code Annotated, Section 49-3-1002, is amended to delete the following words and phrases, "the bonds shall be known as 'school bonds'", and by substituting instead the following: "the bonds shall be known as 'school bonds' or as 'general obligation school bonds'."

SECTION 19. Tennessee Code Annotated, Section 49-3-1002(d), is amended to add the following additional subsections:

(h) With respect to all or any portion of any issue of bonds issued or anticipated to be issued hereunder, at any time during the term of the bonds, and upon receipt of a report of the comptroller of the treasury or the comptroller's designee finding that the contracts and agreements authorized in this subsection are in compliance with the guidelines, rules or regulations adopted or promulgated by the state funding board, as set forth in subsection (i), a county by resolution may authorize and enter into interest rate swap or exchange agreements, agreements establishing interest rate floors or ceilings or both, and other interest rate hedging agreements under such terms and

conditions as the governing body of the county may determine, including, without limitation, provisions permitting the county to pay to or receive from any person or entity any loss of benefits under such agreement upon early termination thereof or default under such agreement.

(i) The governing body of a county may enter into an agreement to sell its bonds (other than its refunding bonds) under this chapter providing for delivery of its bonds on a date greater than ninety (90) days and not greater than five (5) years (or such greater period of time if approved by the comptroller of the treasury or the comptroller's designee), from the date of execution of such agreement or to sell its refunding bonds under this chapter providing for delivery of its refunding bonds on a date greater than ninety (90) days from the date of execution of the agreement and not greater than the first optional redemption date on which the bonds being refunded can be optionally redeemed resulting in cost savings or at par, whichever is earlier, only upon receipt of a report of the comptroller of the treasury or the comptroller's designee finding that the agreement or contract of a county to sell its bonds as authorized in this subsection is in compliance with the guidelines, rules or regulations adopted or promulgated by the state funding board in accordance with the provisions of subsection (j). Agreements to sell bonds and refunding bonds for delivery ninety (90) days or less from the date of execution of the agreement do not require a report of the comptroller of the treasury or the comptroller's designee.

(j) The state funding board shall establish guidelines, rules or regulations with respect to the agreements and contracts referenced in subsections (h) and (i), which may include, but shall not be limited to, the following:

(1) The conditions under which such agreements or contracts can be entered into;

(2) The methods by which such contracts are to be solicited and

procured;

(3) The form and content such contracts shall take;

(4) The aspects of risk exposure associated with such contracts;

(5) The standards and procedures for counterparty selection, including rating criteria;

(6) The procurement of credit enhancement, liquidity facilities, or the setting aside of reserves in connection with such contracts or agreements;

(7) The methods of securing the financial interest in such contracts;

(8) The methods to be used to reflect such contracts in the county's financial statements;

(9) Financial monitoring and periodic assessment of such contracts by the county;

(10) The application and source of non-periodic payments; and

(11) Educational requirements for officials of any county responsible for approving any such contract or agreement.

Prior to the adoption by the governing body of the county of a resolution authorizing such contract or agreement, a request shall be submitted to the comptroller of the treasury or the comptroller's designee for a report finding that such contract or agreement is in compliance with the guidelines, rules or regulations of the state funding board. Within fifteen (15) days of receipt of the request, the comptroller of the treasury or the comptroller's designee shall determine whether the contract or agreement substantially complies with the guidelines, rules or regulations and shall report thereon to the county. If the report of the comptroller of the treasury or the comptroller's designee finds that the contract or agreement complies with the guidelines, rules or regulations of the state funding board or the comptroller of the treasury or the comptroller's designee shall fail to report within the fifteen-day period, then the county may take such action with

respect to the proposed contract or agreement as it deems advisable in accordance with the provisions of this section and the guidelines, rules or regulations of the state funding board. If the report of the comptroller of the treasury or the comptroller's designee finds that such contract or agreement is not in compliance with the guidelines, rules or regulations, then the county is not authorized to enter into such contract or agreement. The guidelines, rules or regulations shall provide for an appeal process to a determination of noncompliance.

(k) When entering into any contracts or agreements facilitating the issuance and sale of bonds, including contracts or agreements providing for liquidity and credit enhancement and reimbursement agreements relating thereto, interest rate swap or exchange agreements, agreements establishing interest rate floors or ceilings or both, other interest rate hedging agreements, and agreements with the purchaser of the bonds authorized under this section evidencing a transaction bearing a reasonable relationship to this state and also to another state or nation, the county may agree in the written contract or agreement that the rights and remedies of the parties thereto shall be governed by the laws of this state or the laws of such other state or nation; provided, that jurisdiction over any county against which an action on such a contract or agreement is brought shall lie solely in a court in Tennessee which would otherwise have jurisdiction of actions brought in contract against such county.

SECTION 20. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared severable.

SECTION 21. This act takes effect July 1, 2001, the public welfare requiring it.